

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW REASONOVER,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 240824

Wayne Circuit Court

LC No. 01-002509-01

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his convictions, following a bench trial, of assault with intent to rob while armed, MCL 750.89, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced to prison terms of nine to sixty months and two years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court improperly denied his motion for a new trial because the victim's statements and testimony were so inconsistent that it was clear that she really did not know if he was the person who committed the crime. The trial court's ruling on a motion for a new trial based on the great weight of the evidence is reviewed for an abuse of discretion, *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001), although this Court gives substantial deference to a trial court's determination that a verdict is not against the great weight of the evidence. *Arrington v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992).

"On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes the verdict has resulted in a miscarriage of justice." MCR 6.431(B). A motion for a new trial may be granted where the verdict was manifestly against the clear weight of the evidence, i.e., the evidence so clearly weighed in the defendant's favor that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). In reviewing a motion for a new trial on the ground that the verdict was against the great weight of the evidence, the judge must review the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). Generally, a verdict may be vacated only when it is not reasonably supported by the evidence and was more likely the result of causes outside the record, such as passion, prejudice,

sympathy, or some other extraneous influence. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993).

“As a general rule, the trial judge, as trier of fact, has the duty to weigh the testimony and assess the credibility of the witnesses.” *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982). When sitting as a factfinder, the judge “may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict.” *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984). “The credibility of the identification testimony was a matter for the trial court, as the trier of fact, to decide,” and this Court “will not resolve it anew.” *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). “Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial” absent exceptional circumstances not present here. *Lemmon*, *supra* at 643-644, 647.

Although the victim’s statements to the police showed that she was not always consistent in her identification of the gunman, at trial she was adamant that she recognized defendant as the person who pointed a gun at her face and demanded money. The trial court concluded that the victim recognized defendant by sight if not by name and thus her identification of defendant was credible. The discrepancies between the victim’s statements and testimony did “not preponderate so heavily against the verdict that it would be a miscarriage of justice to let the verdict stand.” *McCray*, *supra* at 638. Accordingly, we find no abuse of discretion in the trial court’s ruling.

We affirm.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello